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**Robert D. Coble**
Member

September 16, 2005

Charles Terreni
S.C. Public Service Commission
Chief Clerk/Administrator
South Carolina Public Service Commission
101 Executive Center Drive, Suite 100
Columbia, South Carolina 29210



RE: Bellsouth Telecommunications, Inc.
Docket No. 2005-63-C

Dear Charlie:

Please find the attached Brief for filing in regards to the above-referenced matter. By copy of this letter I am serving same on other counsel of record.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Robert D. Coble

RDC/cb
cc: Patrick W. Turner, Esquire
M. John Bowen, Jr., Esquire
Meredith E. Mays, Esquire
John J. Pringle, Jr., Esquire
Frank Ellerbe, Esquire
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**BEFORE**
**THE PUBLIC SERVICE COMMISSION**
**OF**
**SOUTH CAROLINA**

**Docket No. 2005-63-C**



| | | |
|---|---|---|
| **IN RE:** | **BellSouth Telecommunications, Inc. Transit Traffic Tariff** | ) ) ) |

# POSTHEARING BRIEF OF ALLTEL SOUTH CAROLINA, INC.

ALLTEL South Carolina, Inc. (ALLTEL) submits this Posthearing Brief with respect to the transit traffic rate and tariff proposed by BellSouth Telecommunications, Inc. (BST).

## Summary

As indicated in its testimony in this matter, ALLTEL is not opposing BST receiving compensation for transit service or from tariffing an appropriate rate. However, BST's proposal would establish a default rate, terms and conditions that presently would only be applicable to ALLTEL. The rate would initially be $0.003 per minute, nearly three times higher than what it charges other carriers using the same service, and would double in less than four months to $0.006 per minute. Therefore, the proposed rates and tariff are unreasonably discriminatory and unlawful. Additionally, the tariff should be suspended or disallowed because it is premature for this Commission to allow such a rate,

when the applicable standard with respect to establishing such a rate is an issue that is presently before the Federal Communications Commission (FCC).

## Introduction and Background

On February 2, 2005, BST filed a proposed tariff with this Commission pursuant to S.C. Code Section 58-9-576. See BST Proposed Notice of Filing submitted to the Commission by letter dated April 29, 2005, attached as Exhibit 1. The proposed tariff would apply to transit service, defined in the tariff as local traffic originating on one telecommunications service provider's network that is delivered by BST to a different telecommunications service provider's network for termination. BST proposed transit tariff, Section A16.1.1 B.

Although BST only filed the present transit service tariff earlier this year, transit service is not new and this is not the first BST tariff that addresses this service. Transit service has been provided by BST to other carriers for many years and the rates, terms and conditions governing the service are included in the existing BST intrastate and interstate access tariffs at significantly lower rates than BST is proposing in the transit service tariff.

As the North Carolina Public Utility Commission (NC Commission) stated in its order determining that transit service is required by state and federal law, this service "has been around since "ancient times" in telecommunications terms." *In the Matter of Petition of Verizon South, Inc., for Declaratory Ruling that Verizon is not Required to Transit InterLATA EAS Traffic*, Docket No. P-19, SUB 454, September 22, 2003, page 6 (the North Carolina Order). A copy of the North Carolina Order is attached hereto as

Exhibit 2. BST has been providing this service to interexchange carriers (IXCs) and independent telephone companies, including the South Carolina Telephone Coalition (the SCTC) and ALLTEL (collectively, the ICOs) since at least the break up of the Bell System. BST has also been providing this service to Commercial Mobile Radio Service providers (CMRS) and Competitive Local Exchange Carriers (CLECs) since their creation.

Similarly, the arrangements between BST and the various carriers with respect to the provision of this service have been in existence for many years. IXCs obtain transit service pursuant to BST's intrastate or interstate access tariffs, depending on the jurisdiction of the transited traffic. The BST access tariffs specify the tandem switching and transport charges applicable to transit service and IXCs pay approximately $0.00114 per minute for transit service obtained from BST pursuant to the existing access tariffs as tandem switching and transport. Eve Rebuttal Testimony, Page 4 line 23. BST does not charge the ICOs for this service under the existing transit arrangement between the ICOs and BST. The existing arrangement between ICOs and BST has been in place since the initial provision of this service by BST. With the advent of CMRS and CLEC services, BST negotiated comprehensive interconnection agreements with those carriers that are now governed by the Telecommunications Act of 1996 (96 Act). Among the many other interconnection issues negotiated, arbitrated and ultimately addressed in those interconnection agreements, BST succeeded in establishing transit service rates of approximately $0.003 per minute. The BST proposed transit tariff would allow BST to charge $0.003 per minute through December 2005 and beginning January 2006, less than four months from now, charge $0.006 for this transit service.

The same BST network elements and functions are utilized to provide the transit service regardless of whether the BST service is used by an ICO, IXC, CLEC or CMRS carrier. Eve Rebuttal Testimony, page 7, lines 1 through 8. All carriers use the same elements and functions of the BST network that comprise transit service, tandem switching and transport. As stated above, however, these elements have been and are presently available to certain carriers at rates prescribed in BST's existing interstate and intrastate access tariffs.

In the hearing, the Commission was advised that immediately prior to the hearing, BST negotiated the "principles" of a new transit service agreement with all of the ICOs, except ALLTEL. Transcript page 8 lines 16 through 21. Although asked, BST refused to reveal the terms of this new arrangement and indicated it does not intend to file such with the Commission. Transcript page 98 lines 4 through 11. ALLTEL and BST also advised the Commission in the hearing that they are presently attempting to negotiate a new arrangement that would replace the implied contract that currently exists between BST and ALLTEL but have not concluded those negotiations.

BST is attempting to establish the proposed transit tariff as the default rate, terms and conditions that would apply to a carrier, without regard to its existing access tariff, if the carrier does not enter into an alternative agreement with BST. BST contends that under South Carolina laws it is authorized to file this tariff, enter into deregulated contracts for the same service and establish the rates in either the tariff or contracts at its sole discretion. Transcript pages 23 and 24. Furthermore, under BST's proposal, carriers apparently would be denied from obtaining transit service out of the existing access tariff and would have no recourse to arbitration or mediation by this Commission or the FCC.

The transit tariff would simply apply, the existing access tariff would be ignored, and the negotiations would be over.

The proposed tariff, however, is unnecessary due to the existing access tariff that is applicable to such service. Alternatively, if the Commission will not reject the proposed transit tariff then the rates in the transit tariff must be equivalent to the rate in BST's existing access tariff. As demonstrated in this proceeding, the proposed tariff is unlawful and improper and should be rejected for, among others, the following reasons:

1. SC Code Section 59-9-56(B)(5) requires BST to set rates "on a basis that does not unreasonably discriminate between similarly situated customers..."

2. The determination of the relevant pricing standard that may be applicable to a transit service rate is an issue pending at the FCC and this Commission should suspend or disallow the proposed tariff, including the rate, until the FCC determines the relevant pricing standard.

**1. The BST Proposed Transit Rates are Unlawful Unreasonable Discrimination**

As described above, the proposed tariff would presently only be applicable to ALLTEL. ALLTEL, however, uses the same elements and functions of the BST network as do IXCs. Because ALLTEL uses the same BST network elements and functions utilized by IXCs in transiting the BST network to reach other carriers and merely needs standalone transit service rather than a comprehensive interconnection agreement, ALLTEL should be provided transit service at the rates charged to IXCs. Although the service used by ALLTEL is indistinguishable from the service used by IXCs, the IXCs are billed at rates contained in the existing BST inter- and intrastate

access tariffs, depending on the jurisdiction of the traffic involved, that are substantially less than what BST is attempting to force ALLTEL to pay.

FCC findings support ALLTEL's position. The FCC expressly acknowledged that the access arrangement used by IXCs is "equivalent" to the transit service that is the subject of the proposed tariff and is considering requiring transit service be offered at the "same rates, terms, and conditions". *In the Matter of Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005), paragraph 132. Not only is the service used by ALLTEL equivalent to that used by IXCs, but also due to a BST mandate, ALLTEL uses the same trunking facilities as other carriers. Eve Rebuttal Testimony page 7 lines 1 through 8. No justification for the discrimination proposed by BST is present in the record, because no justification exists.

While, the South Carolina legislature provided local exchange companies electing regulation under South Carolina Code Section 58-9-576 considerable discretion in setting their non-basic rates, it carefully proscribed that such companies may not "unreasonably discriminate". S.C. Code Section 58-9-576(B)(5). As described above and reflected on Exhibit 1, Section 58-9-576 is the South Carolina Code section under which BST filed this transit tariff. Therefore, subsection (B)(5) is applicable to the proposed tariff and prohibits the unreasonable discrimination that would result.

The record of this proceeding established without any doubt or evidence to the contrary, that the rates BST attempts to impose on ALLTEL would be substantially greater than that paid by any other carrier. It is also undisputed that the service obtained by ALLTEL is the same as that used by IXCs. BST's tariff singles out ALLTEL for

drastically different and more onerous treatment than it provides IXCs. It would also be unreasonably discriminatory as compared to what CLECs pay beginning January 2006 when the transit tariff rate would double. This conduct is clearly prohibited by South Carolina law.

The Louisiana Public Service Commission was recently faced with the same transit rate issue. *In re: Joint Petition for dispute resolution between the rural ILECs and BellSouth Telecommunications, Inc. concerning transit traffic*, Docket Number U-28042, Order Number U-28042, dated June 24, 2005 (the Louisiana Order). Specifically, Issue 1 in Louisiana was "The exact transit rate BellSouth can charge the Rural ILECS". Louisiana Order, page 1. The Louisiana Commission relying on its "original and primary jurisdiction", recognized the

> ...importance of implementing a transit agreement between the Rural ILECs and BellSouth for exchanging local traffic between them, ... so that other carriers may have the option of sending and receiving local traffic to and from the Rural ILECS through a common BellSouth network.

Louisiana Order, page 2. The Louisiana Commission ordered the transit rates be set at $0.001 for the first year of the agreement, increasing gradually to $0.002 in the fifth year. A copy of the Louisiana Order is attached hereto as Exhibit 3. The Louisiana Commission clearly found that rates much lower than those proposed by BST in this proceeding, equivalent to those charged IXCs, were required.

Similar proceedings to examine transit rates have been initiated in Georgia and Florida. *BellSouth Telecommunications, Inc Petition for Declaratory Ruling Regarding Transit Traffic,* Docket No. 16772-U. and *In re: Joint Petition of TDS Telecom et al Requesting a Generic Investigation of Third-party Transit Traffic Arising from Proposed Transit Traffic Tariff filed by BellSouth Telecommunications, Inc.,* Docket No. 050570-

TP. The similar BST transit tariff filing in North Carolina, that was resulting in an examination of the proposed transit rate under a 96 Act analysis, was apparently withdrawn after the North Carolina Commission, as described above, determined that transit service is an obligation of ILECs under both state and federal law. These states, like South Carolina, have statutes that provide considerable discretion in setting rates, but, like Louisiana did, are going to determine the appropriate rate to be charged by BST for transit service. In other words, those commissions are not going to allow BST to unilaterally establish an unreasonable discriminatory rate as BST is attempting in this proceeding.

The significance of what rate BST can and will charge for transit service is very substantial. There are simply no viable economic options to the use of BST's transit service to reach all other carriers. Although BST contends that the transit tariff reflects market-based rates, BST is the only available transit service provider that BST could identify. "I'm not aware of the names of any that are currently providing the service". McCallan Cross Examination, Transcript, page 99 lines 18 and 19. Not only is it impossible to have a market based rate when BST is the only provider in the market, but this also clearly demonstrates that BST was wrong in asserting that carriers have many options by which to send and receive traffic that now transits the BST network. BST also in contradiction to its testimony that many options exists, acknowledged that until the volume of traffic would justify such, direct connections are not feasible. McCallan Direct Testimony page 19 lines 8 through 11. Remarkably, when asked what level of traffic would justify a direct connection, BST offered no indication. Transcript, page 11, lines 2 through 7. BST failed to support its own assertion that there are alternatives or

options to using its transit service. The need for transit service is simply too great to be relinquished to the unilateral discretion of the only transit provider in the market.

The Commission's records demonstrate that there are numerous different CLECs and CMRS carriers operating within and at various locations in BST territory. Presently, they exchange traffic with ALLTEL, other ICOs and each other by the only practical means possible, the BST network. ALLTEL can not practically or economically duplicate the BST network and establish connections with all carriers, directly or indirectly, in the near future. There simply are no alternative networks that are as extensive as BST's network to provide ubiquitous transit service. Additionally, because the various carriers are located throughout BST's territory, multiple direct connections or multiple new indirect connections would be required if BST were not the intermediary. It is simply unreasonable for BST to assert that there presently are or will be in the foreseeable future, viable alternatives to its transit services.

While the FCC has not completed the rule making process where the issue was raised, it has already expressly acknowledged the importance of transit service. The FCC stated "Without the continued availability of transit service, carriers that are indirectly interconnected may have no efficient means by which to route traffic between their respective networks." *In the Matter of Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005), paragraph 125. The North Carolina Commission also clearly acknowledged the significance of transit service. It found that the "ubiquity of the telecommunications network would be impaired" without the transit option. North Carolina Order at page 6. In asserting that other transit service options exist, BST is simply ignoring the reality of

the present day telecommunications infrastructure. Its transit service is the only present viable, economic option.

When asked "What is the basis for BellSouth's proposed Transit Tariff Rate of $0.003 per minute of use...", the only justification that BST offered was that it is "comparable" to the rate reflected in its interconnection agreements with CLECs and CMRS carriers. McCallan Direct Testimony, page 11, lines 6 through 13. BST, therefore, did not attempt any justification for the rate that will be in effect in January 2006. The initial proposed rate of $0.003, while "comparable" to the CMRS and CLEC interconnection agreement rate until December 2005, in less than four months would be doubled to $0.006. Therefore, by the time this proceeding could be concluded, the transit tariff rate will be twice the rate reflected in BST's existing interconnection agreements. BST provides no justification for this dramatic two-fold increase.

Another fallacy in BST's reliance on its CLEC transit rates is BST's contradiction regarding whether this transit service is subject to the 96 Act. BST contends this service is not a 96 Act interconnection service, but in contradiction, attempts to justify its initial transit tariff rate relying on the rates it negotiated and included in interconnection agreements pursuant to the 96 Act.

Further, BST's attempt to justify its initial rate based on the rate in its interconnection agreements can best be described as a "reverse pick and choose", i.e. it is attempting to "pick and choose" a rate out of a comprehensive interconnection agreement and force it on ALLTEL. If the tables were turned and ALLTEL was demanding a single rate from the BST interconnection agreements, BST could rightfully refuse. *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local*

*Exchange Carriers,* CC Docket No. 01-338, Second Report and Order, 19 FCC Rcd 13494 (2004). The same reasoning for why a carrier can not "pick and choose" individual terms from a comprehensive interconnection agreement is applicable to this reverse pick and choose. The FCC's logic in changing its rule that had allowed pick and choose was that the rule "failed to promote the meaningful, give and take negotiations envisioned by the Act". Ibid at page 13501. The FCC recognized that there is give and take among the terms of an agreement. Therefore, it is not possible to single out an individual feature or rate of a comprehensive agreement and conclude that the feature or rate was negotiated independent of the give and take with respect to other features or rates in the agreement.

The CLEC and CMRS rates, therefore, provide no justification for the standalone transit service that BST is proposing in its transit tariff. ALLTEL is also not seeking and does not need a comprehensive interconnection agreement like CLECs or CMRS carriers. Rather, ALLTEL only needs a standalone transit service as is available from BST's access tariffs and used by IXCs. ALLTEL should be offered the same rate that is applicable to the stand-alone service in BST's existing access tariff.

**2. <u>The Issues Presented in the Proceeding are Pending at the FCC and this Commission Should Reject the Tariff Until the FCC Has Ruled</u>**

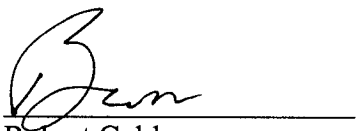
As the above discussion demonstrates there are several critical legal issues that are presented and that must be resolved with respect to the BST proposed transit tariff. The resolution of these issues, however, is presently pending before the FCC in its intercarrier compensation reform proceeding. In its notice, the FCC stated, "...we solicit

further comment on whether there is a statutory obligation to provide transit services under the Act," and more succinctly, "... we seek further comment on the appropriate pricing methodology...." *In the Matter of Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005), paragraphs 121 and 132. It is unnecessary and premature for this Commission to reach any conclusion on these issues by allowing the BST tariff to be effective. This Commission should suspend the transit tariff or reject it pending the ultimate determinations by the FCC. Carriers would be allowed to continue to negotiate appropriate contracts, to which both BST and ALLTEL have committed, or to obtain the service in accordance with the terms of the existing BST access tariff.

Conclusion

The BST proposed transit tariff should be rejected or suspended. BST does not have the unilateral authority under South Carolina law to establish rates that are unreasonably discriminatory. If the proposed tariff is allowed to be effective as proposed, BST will be charging significantly higher discriminatory rates to select carriers, including ALLTEL, for the very same service that is available in BST's existing access tariffs. The proposed tariff should be rejected or the rate in the transit tariff conformed to the rates in the existing access tariff.

Respectfully submitted,

By: 
Robert Coble

**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA**
**COLUMBIA, SOUTH CAROLINA**

## PROPOSED NOTICE OF FILING

**BRIEF DESCRIPTION OF THE PLEADING (*Relief the Company is Seeking from the Commission*):**

BellSouth is not filing a pleading or seeking relief from the Commission. Instead, BellSouth is making a revision to a previously-filed tariff. In Section A16.1.2.A of the revised tariff, BellSouth has added language to clarify that the rates in the tariff will apply only to those telecommunications service providers that do not have an interconnection agreement with BellSouth that provides for payment of transit traffic service. This language also states that charges in this tariff will not apply to any carrier who has an expired interconnection agreement providing for payment of transit traffic service provided that carrier is engaged in ongoing negotiations or arbitration for a new interconnection agreement and the former agreement provides for continuing application during that period.

**STATUTORY OR OTHER LEGAL AUTHORITY UNDER WHICH PLEADING IS FILED:**

BellSouth is making this tariff filing pursuant to S.C. Code Ann. §58-9-576.

**IF THE PLEADING IS A RATE CASE AFFECTING THE GENERAL BODY OF SUBSCRIBERS, LIST ALL CURRENT AND PROPOSED RATES AND ANY OTHER CHANGES TO THE COMPANY'S TARIFF CURRENTLY ON FILE WITH THE COMMISSION:**

BellSouth's tariff filing is not a rate case, it does not change any existing rate, and it does not affect the general body of subscribers.

# LOUISIANA PUBLIC SERVICE COMMISSION

## ORDER NUMBER U-28042

## SMALL COMPANY COMMITTEE OF THE LOUISIANA TELECOMMUNICATIONS ASSOCIATION AND BELLSOUTH TELECOMMUNICATIONS, EX PARTE

***Docket Number U-28042. In re: Joint Petition for dispute resolution between the rural ILECs and BellSouth Telecommunications, Inc. concerning transit traffic (Pursuant to Rules 51 and 57 of the LPSC's Rules of Practice and Procedure)***

(Decided at the April 20, 2005 Business and Executive Session)

*BACKGROUND*

On February 4, 2004, the Commission issued Order U-27292 ("Order") which adopted a stipulated settlement reached by BellSouth Telecommunications, Inc. ("BellSouth") and the Small Company Committee of the Louisiana Telecommunications Association ("SCC"). As set forth in the Order, the parties established a mechanism to handle transit traffic on a going forward basis, including compensation for carrying such traffic, until December 31, 2004. Prior to the expiration of the agreement, the parties agreed to commence good faith negotiations with the purpose of establishing agreements for handling such traffic on a going forward basis.

Pursuant to the requirements of the Order, the Parties negotiated in good faith a proposed agreement to handle transit traffic. Unfortunately, issues remained in dispute, resulting in the parties filing the Joint Petition on July 16, 2004, at which time they requested the Commission intervene to assist in reaching a resolution. The parties conducted discovery and filed testimony into the record prior to a scheduled hearing. At the request of the SCC and BellSouth to allow the parties to negotiate a settlement of the pending issues, the ALJ continued the hearing set in this matter. In that regard, the Staff conducted a mediation between BellSouth and the SCC on December 6, 2004, and proposed certain terms to resolve the disagreement. Despite some understanding being reached, BellSouth and the Rural ILECs have not been able to reach final terms of a transit agreement.

Essentially three issues remained in dispute between the Rural ILECs and BellSouth. Specifically, these issues are as follows:

**Issue 1 - The exact transit rate BellSouth can charge the Rural ILECs.**

**Issue 2 - Whether BellSouth should block transit traffic from a third party in specific limited circumstances at the direction of the Rural ILECs.**

**Issue 3 - Whether BellSouth should be liable for compensation due Rural ILECs in specific limited circumstances if a compensation agreement between a Rural ILEC and a third party is not in place.**

*STAFF'S PROPOSAL*

*Issue #1*

Based on its review of the existing rates being charged for transiting functions, and other information submitted into the record, Staff proposed the following transit rates be implemented on a minute of use basis:

Year 1 $0.001
Year 2 $0.00125
Year 3 $0.0015
Year 4 $0.00175
Year 5 $0.002

*Issue #2*

In light of the severity of consequences that may occur if traffic was ordered to be blocked, Staff suggested traffic may only be blocked by BellSouth pursuant to an explicit Commission order resulting from a fact specific LPSC complaint proceeding between the affected carriers. BellSouth may not block transit traffic at the request of a Rural ILEC. Additionally, Staff proposed that BellSouth provide the Rural ILECs with sufficient information to allow them to bill third party carriers. Therefore, except as provided below, BellSouth shall provide the Rural ILECs industry-standard monthly call detail records (e.g., 110101 reports) for all traffic subject to the Transit Agreement.

In the following specific limited circumstances where BellSouth is not currently able to provide industry-standard call detail records, i.e., UNE-P providers, non-meet point billed CMRS providers, and Type 1 interconnection CMRS providers, BellSouth shall be permitted to provide the Rural ILECs a monthly detailed Summary Report. The accuracy of this report will depend upon in part the accuracy of information provided to BellSouth by third-party originating carriers. This report shall include at a minimum all of the data included on Exhibit C to Mr. Ray McCallen's Rebuttal Testimony in the record which should be sufficient for the Rural ILECs to properly bill the third-party originating carriers.

To the extent an industry standard process is developed and implemented within BellSouth for providing call detail records for UNE-P traffic, non-meet point billed traffic, and/or traffic generated over a Type 1 interconnection arrangement, BellSouth shall provide to the Rural ILECs the industry-standard call detail records for all traffic covered by such new processes and subject to the Transit Agreement. Until that time, the Summary Reports shall be considered a sufficient, acceptable method for providing information for UNE-P providers', non-meet point billed CMRS providers' and Type 1 interconnection CMRS providers' traffic, and any other traffic for which BellSouth cannot provide 110101 Reports. Carriers shall be permitted to bill each other utilizing the Summary Reports unless and until they are replaced by industry standard records developed and implemented in accordance with this paragraph.

*Issue #3*

Staff proposed BellSouth should not be responsible for compensation due a Rural ILEC from a third party originating carrier for traffic subject to the Transit Agreement that is terminated by a Rural ILEC.

*COMMISSION CONSIDERATION*

Staff's proposal was brought before the Commission for its consideration at the April 20, 2005 Business and Executive Session. Following discussion of the proposal, Commissioner Blossman offered the following motion:

In accordance with Rules 51 and 57 of the Commission's Rules of Practice and Procedure, I move that the Commission assert its original and primary jurisdiction over the *Joint Petition for Dispute Resolution between the Rural ILECs and BellSouth concerning transit traffic* currently pending before the ALJ in Docket No. U-28042.

The parties filed the Joint Petition July 16, 2004. Since that time, the parties have conducted discovery and have filed testimony into the record. The ALJ continued the hearing set in this matter at the request of the Rural ILECS and BellSouth to allow the parties to negotiate a settlement of the pending issues. In that regard, the Staff conducted a mediation between BellSouth and the Rural ILECs on December 6, 2004. Nevertheless, BellSouth and the Rural ILECs have not been able to reach final terms of a transit agreement.

Considering the importance of implementing a transit agreement between the Rural ILECs and BellSouth for exchanging local traffic between them, and having such an agreement in place so that other carriers may have the option of sending and receiving local traffic to and from the Rural ILECs through a common BellSouth network, the Commission must act now to establish terms of the BellSouth/Rural ILEC local traffic transit agreement.

In that regard, I move that the Commission resolve the issues in dispute as follows based on the complete record before the Commission in this docket:

***Issue 1 - The exact transit rate BellSouth can charge the Rural ILECs.*** Based on the Staff's analysis of this issue, the parties' testimony and record evidence, I recommend that the transit rates be set as follows for the first 5 years of the transit agreement, beginning January 1, 2005 usage:

Year 1 $0.001
Year 2 $0.00125
Year 3 $0.0015
Year 4 $0.00175
Year 5 $0.002

These rates are applicable to local and EAS transit traffic originated by a Rural ILEC and terminated by a carrier other than BellSouth. Further, LOS traffic originated by a Rural ILEC and terminated by BellSouth shall continue to be handled between the parties pursuant to their historical settlements process. LOS traffic originated by a Rural ILEC and terminated by a carrier other than BellSouth shall be subject to the terms of the Transit Agreement between the Rural ILECs and BellSouth.

***Issue 2 - Whether BellSouth should block transit traffic from a third party in specific limited circumstances at the direction of the Rural ILECs.*** Based on the Staff's analysis of this issue, the parties' testimony and record evidence, I recommend that transit traffic may only be blocked by BellSouth pursuant to an explicit Commission order resulting from a fact specific LPSC complaint proceeding between the affected carriers. BellSouth may not block transit traffic at the request of a Rural ILEC. It is reasonable for BellSouth to block transit traffic only where the Commission has expressly found that blocking is technically feasible and has ordered such blocking. In addition, any additional costs shown to be incurred by BellSouth resulting from complying with a Commission blocking order and any appropriate fee, should be borne as determined by the Commission.

In addition, one of BellSouth's obligations under the Transit Agreement is to provide the Rural ILECs the data necessary so that the Rural ILECs can properly bill the third party originating carriers according to the terms of their agreements with the third party originating carriers. Therefore, except as provided below, BellSouth shall provide the Rural ILECs industry-standard monthly call detail records (e.g., 110101 reports) for all traffic subject to the Transit Agreement.

In the following specific limited circumstances where BellSouth is not currently able to provide industry-standard call detail records, i.e., UNE-P providers, non-meet point billed CMRS providers, and Type 1 interconnection CMRS providers, BellSouth shall be permitted to provide the Rural ILECs a monthly detailed Summary Report. The accuracy of this report will depend upon in part the accuracy of information provided to BellSouth by third-party originating carriers. This report shall include at a minimum all of the data included on Exhibit C to Mr. Ray McCallen's Rebuttal Testimony in the record which should be sufficient for the Rural ILECs to properly bill the third-party originating carriers.

To the extent an industry standard process is developed and implemented within BellSouth for providing call detail records for UNE-P traffic, non-meet point billed traffic, and/or traffic generated over a Type 1 interconnection arrangement, BellSouth shall provide to the Rural ILECs the industry-standard call detail records for all traffic covered by such new processes and subject to the Transit Agreement. Until that time, the Summary Reports shall be considered a sufficient, acceptable method for providing information for UNE-P providers', non-meet point billed CMRS providers' and Type 1 interconnection CMRS providers' traffic, and any other traffic for which BellSouth cannot provide 110101 Reports. Carriers shall be permitted to bill each other utilizing the Summary Reports unless and until they are replaced by industry standard records developed and implemented in accordance with this paragraph.

***Issue 3 - Whether BellSouth should be liable for compensation due Rural ILECs in specific***

***limited circumstances if a compensation agreement between a Rural ILEC and a third party is not in place.*** Based on the Staff's analysis of this issue, the parties' testimony and record evidence, I recommend that, beginning with January 2005 usage, BellSouth not be responsible for compensation due a Rural ILEC from a third party originating carrier for traffic subject to the Transit Agreement that is terminated by a Rural ILEC. The Rural ILECs are negotiating in good faith with third party originating and terminating carriers to establish appropriate intercarrier compensation agreements with those carriers.

Finally, it was added by Commissioner Blossman that the Transit Agreement is binding only between BellSouth and the members of the Small Company Committee. Commissioner Blossman's motion was seconded by Commissioner Field and unanimously adopted.

**IT IS THEREFORE ORDERED THAT:**

1. **The Commission's Staff's Proposal, as modified by the motion stated herein, be adopted.**

2. **This Order shall be effective immediately.**

**BY ORDER OF THE COMMISSION**
**BATON ROUGE, LOUISIANA**
June 24, 2005

/S/ C. DALE SITTIG
**DISTRICT IV**
**CHAIRMAN C. DALE SITTIG**

/S/ JAMES M. FIELD
**DISTRICT II**
**VICE CHAIRMAN JAMES M. FIELD**

/S/ JACK "JAY" A. BLOSSMAN
**DISTRICT I**
**COMMISSIONER JACK "JAY" A. BLOSSMAN**

/S/ FOSTER L. CAMPBELL
**DISTRICT V**
**COMMISSIONER FOSTER L. CAMPBELL**

**LAWRENCE C. ST. BLANC**
**SECRETARY**

/S/ LAMBERT C. BOISSIERE, III
**DISTRICT III**
**COMMISSIONER LAMBERT C. BOISSIERE, III**

**STATE OF NORTH CAROLINA**
**UTILITIES COMMISSION**
**RALEIGH**

DOCKET NO. P-19, SUB 454

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
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| In the Matter of<br>Petition of Verizon South, Inc., for Declaratory<br>Ruling that Verizon is Not Required to Transit<br>InterLATA EAS Traffic between Third Party<br>Carriers and Request for Order Requiring<br>Carolina Telephone and Telegraph Company<br>to Adopt Alternative Transport Method | ) | ORDER DENYING PETITION |

BY THE COMMISSION: On January 30, 2002, the Commission issued an Order establishing extended area service (EAS) between the Durham exchange of Verizon South, Inc. (Verizon), the Pittsboro exchange of Carolina Telephone and Telegraph Company (Carolina or, collectively with Central Telephone Company, Sprint), and the Hillsborough exchange of Central Telephone Company (Central or, collectively with Carolina Telephone and Telegraph Company, Sprint) (the EAS Order).[1] This EAS was implemented on June 7, 2002. EAS from the Durham exchange to the Pittsboro exchange and zero-rated expanded local calling from the Durham exchange to the Hillsborough exchange were implemented earlier in the tax flow-through docket, Docket No. P-100, Sub 149.

Shortly after the EAS was implemented, the Public Staff began receiving complaints from customers in the Pittsboro exchange who were unable to complete calls to numbers in the Verizon Durham exchange as either local or toll calls. On investigating these complaints, the Public Staff learned that Verizon was blocking calls from the Pittsboro exchange to competing local provider (CLP) and commercial mobile radio service (CMRS) end-users in the Durham exchange. Verizon stated that it blocked the calls because "the proper interconnections between the CLPs, CMRSs and Sprint have not yet been established."[2] Subsequently, the Public Staff learned that Verizon had also begun blocking calls from Central's Roxboro exchange to CLP customers in Durham, calls that it previously had been completing. The Roxboro/Durham route is a two-way interLATA EAS route that has been in service since February 14, 1998. IntraLATA EAS calls from the Hillsborough exchange to CLP end-users in Durham have not been blocked. In its letters

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1 *In the Matter of Carolina Telephone and Telegraph Company – Hillsborough and Pittsboro to Durham Extended Area Service, Order Approving Extended Area Service,* Docket No. P-7, Sub 894 (January 30, 2002).

2 See Verizon's letters from Joe Foster to Nat Carpenter dated July 11, 2002, and October 31, 2002, attached as Exhibits A and B to Verizon's Petition.

to the Public Staff, Verizon agreed to discontinue its blocking until the matter had been resolved by the Commission.

On December 9, 2002, Verizon filed a Petition for Declaratory Ruling (Petition) requesting "that the Commission issue a ruling clarifying that Verizon is not required to transit Sprint's InterLATA EAS traffic destined to third party CLPs/CMRS providers" and "that the Commission direct Sprint to cease delivering traffic destined for third-parties to Verizon and make alternative arrangements for proper delivery of such traffic."

On December 10, 2002, the Commission issued an Order seeking comments and reply comments. Petitions to intervene have been filed by The Alliance of North Carolina Independent Telephone Companies (the Alliance); BellSouth Telecommunications, Inc., (BellSouth); AT&T Communications of the Southern States, LLC, (AT&T); ALLTEL Carolina, Inc., and ALLTEL Communications, Inc., (collectively, ALLTEL); KMC Telecom, Inc. (KMC); ITC^DeltaCom, Inc., (ITC); Level 3 Communications, Inc., (Level 3); US LEC of North Carolina, Inc., (US LEC); and Barnardsville Telephone Company, Saluda Mountain Telephone Company, and Service Telephone Company (collectively, TDS Companies). All petitions to intervene were allowed.

ITC, Level 3 and KMC, US LEC, Sprint, the Public Staff, BellSouth, and AT&T filed initial comments. Verizon, the Alliance, Sprint, and the Public Staff filed reply comments.

On May 16, 2003, the Commission issued an Order scheduling an oral argument on June 19, 2003, to consider:

(1) Whether Verizon is legally obligated to perform a transiting function or to act as a billing intermediary in regards to third-party traffic, and

(2) If so, the principles that should inform the rates, terms and conditions for such services and the appropriate procedure for arriving at a decision about them.

On May 23, 2003, Verizon filed a Motion for Clarification requesting that the Commission make clear that the oral argument would address only legal and not factual issues. On June 3, 2003, Sprint filed a response to Verizon's Motion for Clarification in which it argued that the only issues to be resolved in this matter are legal.

On June 5, 2003, the Presiding Commissioner issued an Order clarifying that the purpose of the oral argument was to decide whether Verizon is obligated as a matter of law pursuant to the Telecommunications Act of 19963 and other applicable provisions of law to perform a transiting function or to act as a billing intermediary with regards to third-party traffic with particular reference to the third-party interLATA EAS calls at issue in this docket. The Order reserved to Commissioners the right to ask questions of the

3 47 U.S.C.A. §§ 151 *et seq.*, "the Act."

participants at the oral argument bearing upon the regulatory process should the matter be decided in one way or another.

The oral argument was heard by the Commission, Commissioner Joyner presiding, on July 15, 2002.

On August 29, 2003, the Commission received briefs and/or proposed orders from the following: Verizon, BellSouth Telecommunications, Inc. (BellSouth), Sprint, the Public Staff, AT&T Communications of the Southern States, Inc. (AT&T), and US LEC of North Carolina, Inc (US LEC). Of these, Sprint, the Public Staff, AT&T, and US LEC may be classified as proponents of the duty to provide the transiting function as a matter of law, while Verizon and BellSouth may be classified as opponents. Since the arguments of the proponents are largely the same, their arguments will be summarized collectively as those of the "Proponents." Likewise, those of Verizon and BellSouth will be summarized collectively as those of the "Opponents." Since many of the citations to the law are the same, but with the Opponents and Proponents putting a different construction on them, the text of the most common citations is set out below.

## Most Common Citations

### Telecommunications Act of 1996 (TA96)

Sec. 251(a) General Duty of Telecommunications Carriers.—Each telecommunications carrier has the duty—

(1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers....

Sec. 251(b) Obligations of All Local Exchange Carriers—Each local exchange carrier has the following duties....

(5) Reciprocal Compensation.—The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

Sec. 251(c) Additional Obligations of Incumbent Local Exchange Carriers.—In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:....

(2) Interconnection.—The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network--

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the carrier's network;

(C) that is at least equal in quality to that provided by the local exchange carrier to itself...or any other party to which the carrier provides interconnection; and

(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

State Law

G.S. 62-110(f1) The Commission is authorized to adopt rules it finds necessary to provide for the reasonable interconnection of facilities between all providers of telecommunications services....

G.S. 62-42(a) Except as otherwise limited in this Chapter, whenever the Commission, after notice and hearing had upon its own motion or upon complaint, finds: (1) That the service of any public utility is inadequate, insufficient or unreasonably discriminatory...or (5) That any other act is necessary to secure reasonably adequate service or facilities and reasonably and adequately to serve the public convenience and necessity, the Commission shall enter and serve an order directing that such...additional services or changes shall be made or affected within a reasonable time prescribed in the order....

Rule R17-4. Interconnection. (a) Interconnection arrangements should make available the features, functions, interface points and other service elements on an unbundled basis required by a requesting CLP to provide quality services. The Commission may, on petition by any interconnecting party, determine the reasonableness of any interconnection request. (b) Interconnection arrangements should apply equally and on a nondiscriminatory basis to all CLPs....

Summary of Proponents' Arguments

The thrust of the Proponents' arguments was that Verizon is obligated under TA96 as well as under State law to perform a transiting function. They argued that this requirement is clearly in the public interest and is in fact necessary to effectuate the purposes of TA96, which include the preserving and extending of the ubiquitous telecommunications network and the encouragement of competition.

With respect to provisions in TA96, the Proponents argue that the transiting obligation follows directly from the obligation to interconnect and the right of non-incumbent carriers to elect indirect interconnection. *See,* Section 251(a)(1) (all carriers to connect directly or indirectly with other carriers) and Section 252(c)(2) (additional ILEC duties regarding interconnection). Transit traffic is an important option to have available because it offers a simple and economical method of interconnection for carriers exchanging a minimal amount of traffic. It was routinely used without objection prior to the enactment of TA96. Otherwise, such carriers would be forced to created redundant and uneconomic arrangements to deliver their traffic. As such, the obligation to provide transit service is necessary to give meaning to the right to interconnect directly

under TA96 and in fulfillment of its purposes. The right to transit service exists independently of any given interconnection agreement, although such agreements may certainly establish procedures for it.

Concerning the *Virginia Arbitration Order* of the FCC's Wireline Competition Bureau (July 17, 2002), the Proponents noted that, contrary to Verizon's representations concerning the import of that decision, the Bureau expressly refused to declare that an ILEC is not obligated to provide transit service but rather, in view of the fact that the FCC had not previously decided the issue, it declined to rule on the issue in the context of its delegated arbitration authority.

The Proponents also maintained that authority to require the transit function could be found under State law. For example, G.S. 62-110(f1) allows the Commission to enact rules regarding interconnection. Rule R17-4 expresses similar sentiments. G.S. 62-42 bears on the matter of compelling efficient service, which would certainly be impaired if there was no duty to provide transit service. Other states, notably Ohio and Michigan, have held for a transit service obligation. None of the Proponents, however, argued that there was a necessary duty for Verizon to perform a billing intermediary function.

Summary of Opponents' Arguments

The key argument of the Opponents was that the provisions of TA96 cited by the Proponents do not create obligations or duties that are separate from interconnection agreements. No such transit obligation, either explicitly or through fair inference, can be found in TA96. Any provision of transit is purely voluntary on the ILECs' part. The Opponents further argue that, since TA96 in both Sections 251 and 252 creates a comprehensive framework with the negotiation and arbitration of interconnection agreements as its centerpiece, this preempts the states from enacting other obligations, such as a transit obligation, based on state law.

With respect to the *Virginia Arbitration Order*, the Opponents contended that the gravamen of that decision was not only that transit services need not be provided at TELRIC rates, they need not be provided at all, since the Bureau stated that it did not find "clear Commission precedent or rules declaring such a duty."

The Opponents declared that at least one state, New York, had decided against a transit obligation, while several others, such as Maryland, Wisconsin, and Michigan, have expressed skepticism about any billing intermediary obligation.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes that good cause exists to find that Verizon is obligated to provide the transit service as a matter of law for the

reasons as generally set forth by the Proponents. Accordingly, Verizon's Petition for Declaratory ruling in its favor is denied.

The Commission is persuaded that a transit obligation can be well supported under both state and federal law. The Commission does not agree with the Opponents' view that duties and obligations under TA96 do not or cannot exist separately from their incarnation in particular interconnection agreements pursuant to the negotiation and arbitration process—or, as Verizon put it, "[TA96] contemplates only duties that are to be codified in interconnection agreements, not duties that apply independent of interconnection agreements."

Aside from not being compelled by the history, structure, or real-world context of TA96, the "interconnection agreements-only" approach suggested by the Opponents would lead to a number of undesirable, even absurd, results. For example, it would call into question the status of generic dockets, which are an efficient means by which the Commission can resolve interconnection issues arising under TA96 *en masse*. Apparently, the state commissions would be limited to arbitrating interconnection agreements one-by-one. There is simply no evidence that Congress intended to abolish generic dockets by the states; indeed, quite the opposite is suggested. *See*, for example, Section 251(d)(3) (Preservation of State Access Regulations). *As* a practical consequence, adoption of the Opponents' view would immoderately multiply the number of interconnection agreements—and the economic costs relating to entering into them—because the corollary of the Opponents' view is that, in order to fully effectuate rights and obligations, everyone must have an interconnection agreement with everybody else, even if the amount of traffic exchanged is minimal. The overall impact would be a tendency to stifle competition by the imposition of uneconomic costs as, for example, by the construction of redundant facilities.

If there were no obligation to provide transit service, the ubiquity of the telecommunications network would be impaired. Indeed, in a small way this has already happened in this case when Verizon refused to transit certain traffic. It should also be noted that the privilege of initiating arbitration proceedings is not symmetrical. Even if an ILEC, such as a smaller one with less than 200,000 access lines, urgently desires an interconnection agreement from a CLP or CMRS, it may not be able to get one. These effects illustrate the ultimate unsupportability of the Opponents' view of their obligations as ILECs to interconnect indirectly—essentially, as matters of grace, rather than duty.

The fact of the matter is that transit traffic is not a new thing. It has been around since "ancient" times in telecommunications terms. The reason that it has assumed new prominence since the enactment of TA96 is that there are now many more carriers involved—notably, the new CMRS providers and the CLPs—and the amount of traffic has increased significantly. Few, if any, thought about complaining about transit traffic until recently. It strains credulity to believe that Congress in TA96 intended, in effect, to impair this ancient practice and make it merely a matter of grace on the part of ILECs, when doing

so would inevitably have a tendency to thwart the very purposes that TA96 was designed to allow and encourage.

The Opponents rely heavily on the *Virginia Arbitration Order* for the proposition that there is no obligation to provide the transit function. The *Order* was not meant to bear such a heavy burden. A close examination of the *Order* yields a more equivocal conclusion. The fact is that the FCC, as is the case in many matters, has not definitively made its mind up on the matter. In the meantime, the telecommunications market and its regulation march on. As much as we would wish for definitive guidance from the FCC, the states cannot always wait for that body to rule one way or another—or somewhere in between.

The Opponents have urged that, in any event, the states are preempted from relying on state law to create a transit obligation. This would seem to follow logically from their view that TA96 has established a comprehensive "interconnection agreements-only" approach. The Commission, as noted above, views this approach as insupportable. In fact, it should be clear that Congress contemplated that states *do* have a role in establishing interconnection obligations as long as they do not thwart the provisions and purposes of Section 251. As alluded to earlier, Sec. 251(d)(3) of TA96 specifically provides that "[i]n prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that (A) establishes access and interconnection obligations of local exchange carriers; (B) is consistent with the requirements of this section; and (C) does not substantially prevent implementation of the requirements of this section and the purposes of this part." It is significant that the wording of this provision mentions both state "policies" and the "purposes" of Sec. 251. It is also useful to observe that the Opponents' "interconnection agreements-only" view would "read out" this savings provision and render it nugatory, because anything done outside of interconnection agreements would, according to the Opponents, be contradictory to Sec. 251. This is yet another example of the consequences of the Opponents' idiosyncratic interpretation of TA96. Establishing a transit obligation and defining reasonable terms and conditions is well within a state's purview, even *arguendo* that no such positive obligation can be derived from TA96.

The real challenge facing the industry and the Commission is not whether there is a legal obligation for ILECs to provide a transit service. The Commission is convinced that there is. The Commission is confident that, should the FCC ever address the issue, it will find the same. The *real* question is what should be the rates, terms and conditions for the provision of that service. Those are matters included or includible under Docket No. P-100, Sub 151. Certainly, interconnection agreements are by and large desirable things, and as many companies as practicable should enter into them. No one really denies that. But it is not always practicable because, among other things, the privilege of petitioning for arbitration under Sec. 252 of TA96 is not symmetrical. This simply reinforces the case that, ultimately, there may need to be a default provision made for those that do not have such agreements or cannot interconnect directly. In such cases, this *may* require ILECs as intermediaries. The equities of the situation are reasonably straightforward—those that

seek to terminate traffic should pay for its termination and the one that transits should be compensated for its services. This *may* also require that an ILEC perform a billing intermediary function—again for reasonable compensation. The system of ubiquitous interconnection and the seamless telecommunications network may well be compromised without this "fail-safe" device. The Commission will move expeditiously on Docket No. P-100, Sub 151 should negotiations come to naught.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 22nd day of September, 2003.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

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Commissioner Robert V. Owens, Jr. did not participate.

**STATE OF SOUTH CAROLINA )**
**)**
**COUNTY OF RICHLAND )**

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the Brief (Docket No. 2003-362-C), dated September 16, 2005, has been served upon the following counsel of record by forwarding same to each via email and also by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 16th day of September, 2005.

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